IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, CIVIL JURISDICTION

WRIT PETITION NO.2282 OF 2007

1.The State of Maharashtra)
through the Additional Chief)
Secretary, Home Department,)
Mantralaya, Mumbai-400 032.)
2.The Director General of Police)
Maharashtra State, Shahid)
Bhagatsing Marg, Mumbai.)
3.The Deputy Inspector General)
of Police (Estt.), in the)
office of the Director)
General of Police,Maharashtra)
State Mumbai.)..PETITIONERS

Versus

1.Mr. Layakmiya Bademiya)
Shaikh)
Police Inspector)
Santacruz Police Station,)
Mumbai, residing at Ferreira)
Mansion, A/8, 3rd Floor,)
Sitladevi Temple Road, Mahim)
Mumbai-400 016.)
2.Smt.Pushpa D. Lagade,)
Police Officers Quarters,)

Building No.E/6, First Floor)

Teen Dongari Police Line,)

M.G. Road, Goregaon (West))

Mumbai.)

3.Smt. Bhaghyawai Namdevrao)

Shende Bhagat, E-9/5,Officers)

Quarters, Police Camp. Marol)

Andheri (East), Mumbai-59.)

4.Smt.Kalpana Pralhad Shingrupe)

302/A, Rail Nagar, C.H.S.)

Vazira Naka, Borivali (West),)

Mumbai-400 091.)

5.Smt. Sujata Rajan Redkar,)

8-Shivneri Bldg,. Paralkar)

Path, Shivaji Park, Dadar,)

Mumbai-400 028.)

6.Smt. Vanmala Shivajirao Pawar)

Bhagya Co-op.Hsg. Soc.,)

Flat No.44, Anand Nagar,)

Chakkikhan, Santacruz (E),)

Mumbai-400 055.)

7.Smt. Pushpa Dilip Deshmukh)

18, Radha Apartments, Marutrao)

Gaikwad Nagar, Aundh, Pune.)

8.Smt. Priti Vijay Chougule,)

Police Officers Quarters,)

Flat No.8, Carter Road,)

Bandra (W), Mumbai-50.)

9.Smt.Sindhu Adhir Nikam,)

New Police Officers Quartes,)

Flat No.1, Bldg., No.1,)

Naigaon H.Q. in front of)

Naigaon Police Hospital,)

Mumbai-400 012.)

10.The Commissioner of Police,)

Greater Mumbai, Crawford)

Market, Mumbai.)

11.Smt.Anita A. Chavan, D/1,)

Maninagar C.H.S. S.N.Dubey)

Road, Dahisar (East),)

Mumbai-400 008.)..Respondents

Mr. A.A . Kumbhakoni, Associate Advocate General with

Mr.N.P.Deshpande, AGP for the Petitioners

Mr. H.S. Shreepad Murthy, for Respondent No.1.

Mr. A.Y. Sakhare, Senior Advocate i/b. Y.K.S. Legal

for respondent Nos. 5 to 9.

Mr. Mahesh Jethmalani with Mr. Pranav Badheka for

Intervenor in Civil Application No.945 of 2007.

CORAM : F.I. REBELLO & R.M.SAVANT,JJ.

DATED : 19TH APRIL, 2007

JUDGMENT (PER F.I. REBELLO, J.)

. Rule. By consent of the parties heard forthwith.

2. The petitioner state, has moved this Court aggrieved

by the order passed by the Maharashtra Administrative Tribunal (MAT) dated 22nd December, 2006 in Original Application No.828 of 2005. The Respondent No.1 was the original applicant and respondent Nos. 2 to 9 here were the original respondents Nos. 4 to 11 before the learned Administrative Tribunal. In the Original Application the respondent No.1 had prayed for setting aside the order dated 4th July, 2005. By that order the State Government decided to fix the seniority of women police inspectors. The further reliefs sought was by way of a mandatory direction to restrain the respondent Nos. 1 to 3 from issuing any promotion orders on the basis of the seniority positions emerging from the grant of deemed dates as per the order dated 4th July, 2005. Various other reliefs were also sought which need not be set out.

. Respondent No.1 was selected as Police Sub Inspector on 1st July, 1977 and thereafter sent for training to the Police Training Centre. The respondent No.1 completed his training on 31st July, 1979. Like the respondent No.1 there were also several others Police Sub Inspectors who were sent for training pursuant to the said recruitment. The respondent Nos. 2 to 9 had been recruited and had been sent for training by order dated 25th September, 1978. On completion of their training they were appointed as Police Sub Inspectors, but in the separate cadre of Women Police Sub Inspectors. The grievance of the respondent No.1 arose on account of the merger of the Women's cadre and the Men's cadre, by Government Resolution of 18th July, 1998. While

passing that order it was set out that a decision had been taken to give equal status to women police officers, similar to men police officers by assigning them equal work and duty as well as equal responsibilities and to give posting similar to men police officers. The common cadre was to constitute both, women and men police officers, by giving parity to women in the State Police Force on the basis of seniority-cum-merit analogous to men personnel/officers.

3. By its impugned order, the learned Tribunal after considering the various contentions as urged on behalf of the parties was pleased to allow the Original Application and issued the following directions:

> "54. Thus for above reasons all the actions of the respondent No.1 to 3 are declared illegal, ultra vires. Accordingly we direct the State Government through its Principal Secretary, Home Department to direct all its subordinate Officer to treat the training period of such police officers as duty for all purposes from the date they joined for training at P.T.C., Nasik P.T. School, Marol, Mumbai after their initial selection as P.S.I. and to readjust seniority of all such police officers, whose seniority has been determined on the basis of Resolution dated 16th August, 1939 and prepare fresh gradation/seniority list accordingly.
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> 55. As the impugned order is based on the combined

> seniority/gradation list prepared by following resolution dated 16th August, 1939, therefore, automatically the impugned order becomes bad in law and non est and accordingly the same is set aside. Application is allowed in terms of prayer clause "A" and "C". To prepare/readjust and finalise combined seniority list of men and women police officers the respective seniority lists we give 6 months time to the respondent Nos. 1 to 3 to comply with the order. Till then the parties are directed to maintain status quo as on today. However, they will not get benefit of the status quo for any other purpose."

It is this order which is the subject matter of the present petition.

4. On behalf of the petitioner State the learned Associate Advocate General submits that the learned Tribunal misdirected itself in granting the reliefs considering that the original applicant, the respondent No.1 herein at the highest could claim seniority in the post from 1979, when he was appointed and consequently there was no question of the Court setting aside the seniority of persons who were not parties before it nor whose seniority had not been challenged without giving to such affected parties a hearing. It is next submitted that the learned Tribunal proceeded on the basis that the resolution of 16th August, 1939 was in force, without noting the fact that the relevant Rules were amended in 1959 and the seniority of Sub

Inspectors was governed by the 1989 Rules.

5. On the other hand on behalf of the Respondent No.1 their learned Counsel contends that when two different cadres are merged the Government ought to have set the criteria for merger of the two cadres and fixing of the inter se seniority of the Officers in the merged cadres. This exercise has not been done. It is further submitted that in so far as male Sub Inspectors are concerned, in terms of the Rules, they had to undergo a training of 18 months whereas under the Rules of recruitment for women Police Sub Inspectors, their training was only for six months and they had not to undergo the full training which the male Sub Inspectors had to undergo in terms of Rule 124 and the other connected Rules. The posts of women Police Sub Inspectors it is pointed out were created by order dated 9th October, 1975, for the purpose of posting at International Airport. The order of appointment dated 25th September, 1978 would indicate that they were to be posted at the integrated Police Force for Airport Security. They were sent for training for six months at the Police Training School, Marol. It is, therefore, submitted that the post of Police Sub Inspectors men and posts of Police Sub Inspectors women, considering their training, nature of duty being different, the posts could not have been treated as equivalent posts for the purpose of fixing seniority in the merged cadre. It is, therefore, submitted that the order of the learned Tribunal cannot be faulted.

. On behalf of the respondent No.s 3 to 9 their learned Counsel has supported the submissions advanced on behalf of the State by the learned Associate Advocate General. It is further submitted that it was open to the State to have merged the two cadres and for that purpose fixed the inter se seniority. The State Government has so done by its Notification of 4th July, 2005 in the post of Police Inspectors and in these circumstances this Court ought to set aside the impugned order of the Tribunal.

6. By an interim order passed on 11th April, 2007 we had permitted the petitioner State to fill in posts of Assistant Police Inspectors and Police Inspectors on promotion without any condition. The only condition imposed was that promotion to the 99 posts of Deputy Superintendent of Police/Assistant Commissioner of Police were to be subject to the final order in this Petition. It has now been clarified that Respondents as they belong to the 1977-1979 batch were not under consideration for those promotions.

7. At the outset we may point out that the Tribunal in para.55 of its order which we have reproduced had directed the petitioner State to prepare and readjust and finalise the combined seniority list of men and women Police Officers. There was no direction as to whether the seniority list was to be on the from the date on which the original applicant respondent No.1 was claiming seniority or was in respect of the entire seniority list, consequent on the direction that the seniority list to be determined based

on the resolution dated 16th August, 1939. The petitioners have interpreted the said directions to mean that not only the seniority of respondent No.1 and other respondents has to be recast but the seniority of all the Police Officers right from the beginning, which would have adverse impact on promotions already effected. In our opinion para.55 of the order will have to be read with para.54. It may also be mentioned that Respondent Nos.3 to 9 were the first batch of Police Sub Inspectors to be recruited in 1978 as earlier there were no such recruitment. It could, therefore, not have been the intention of the learned Tribunal to have set aside the seniority even for the period prior to 1977 as admittedly at the relevant time there were no two distinct cadres of men and women police Sub Inspectors and if resolution of 16th August, 1939 is to be given effect to all male officers would have to be given benefit of the two years. A correct reading therefore, of paragraphs 54 and 55 of the impugned order would indicate that what the Tribunal meant was the seniority commencing from the batch of Respondent No.1 and Respondent Nos. 3 to 9. If the order is not so read then the order will have to be set aside on this ground alone.

8. Having said so we now come to the issue as to whether the resolution of 16th August, 1939 was in force when the respondent No.1 was recruited. The conditions of service of Police Personnel as also Officers are governed by the provisions of the Bombay Police Act, 1951, which hereinafter is referred to as the Act. Section 5 of the Act provides

for constitution of Police Force. Section 5(b) sets out the recruitment, pay, allowances and all other conditions of service of the Police Force shall be such as may from time to time be determined by the State Government by general or special order. In other words considering the provisions of Section 5 of the Bombay Police Act, power has been conferred on the State Government to provide for framing rules pertaining to conditions of service by general or special order. On the coming into force of the Act by virtue of the proviso to Section 5(b), earlier orders were to continue in force until altered or cancelled pursuant to powers conferred under clause (b). At the time the Act came into force the Bombay Police Manual 1950 was in force and as such by virtue of the provisions of Section 5(b) the Rules and/or the special or general orders passed under Section 5(b),

would continue to be in force.

9. The seniority of direct recruit sub inspectors was governed by Rule 89 and more specifically Rule 89(3). A reading of this Rule would indicate that the seniority of a directly recruited Sub Inspector and Head Constables passing the Sub-Inspectors Course, is determined by order of merit in which they pass out from the Police Training School. In other words it provides for fixing the inter se seniority of Sub Inspectors from the same batch, who are sent for training and passed out from the Police Training School. In terms of the Rules the seniority is to be fixed in the order

of the merit lists of the Sub Inspectors..

. The recruitment of male sub inspector was governed by Rule 56. Recruitment was both by competitive examination and by promotion of officers from the lower ranks on the basis of percentage as set out in Rule 56(1). Rule 56(2) which provides for selection of candidate by direct recruitment, as Sub inspector was to be made by a Selection Committee. Under Rule 124 a provision was made for training of the candidates for appointment as Sub Inspectors. Rule 124(2) uses the expression "Sub-Inspector students" and the period of training was to extend over 18 months. The terminology, therefore, used is until they pass the examination, they are Sub Inspector students, who on passing the examination were to be appointed as Sub Inspectors. It would,therefore, be clear from a reading of this Rule that the seniority of the Sub Inspectors is not from the date they were selected and sent for training, as during the course of the training they would only be student Police Sub Inspectors and it is only on successful passing the examination that they are to be appointed as Police Sub Inspector. In fact we asked the Counsel for the parties as there were some controversy to make available the letters of appointment. It would be clear from the information produced and the various seniority lists which were made available, that the seniority has been considered from the date of their actual appointment after undergoing training. This was never protested to by the respondent No.1 or by any other male officer or for that matter by female Sub Inspectors. The date, therefore, of seniority would be the date when they were first issued the letter of appointment

and according to their merit in the batch. In that context we are clearly of the opinion that it is the date of appointment on successful completion of training which is the date of seniority. Considering the Bombay Police Manual, the resolution of 1939 ceased to be in force. The finding of the Tribunal, therefore, on that count which called on the petitioners to count also the period of training is without jurisdiction. The male Police Sub-Inspectors could only be given letter of appointment after completion of their training period which was after 18 months duration and women police Inspectors were to be given the order of appointment on completion of their six months training.

. On this finding itself the order of the tribunal is liable to be set aside.

10. In our opinion, however, this will not resolve the issue as what really the respondent No.1 is contending is the date of seniority to be given to respondent Nos. 3 to 9 in the common cadre. For that purpose we may advert to certain facts. The women Sub Inspectors though they had been sent for training after Respondent No.1 and his batchmates because of the shorter training were given letter of appointment before them. A few facts. On 9th October, 1975 the Government granted sanction to the creation on the establishment of the Commissioner of Police, Greater Mumbai, certain posts, which included 3 posts of women Police Sub Inspectors. These posts were specially sanctioned for the

creation of one additional booth (round-the-clock) for frisking purposes at the International airport, Bombay, for women passengers. Subsequent to that an advertisement was issued in 1978 inviting applications on or before 15th April, 1978. On receipt of the application the candidates who were selected were sent for training and by order of 25th April, 1978 twenty-three candidates were appointed as women Police Sub Inspectors on probation in the order set out therein. The same order sets out that they are detailed for training for six months at the Police Training School, Marol.

11. The State Government thereafter by a Notification of 12th August, 1994 observed that it was considering to reconstitute the police force at the State level and to make common cadre for women and men police and as a consequence training for women and men Police shall be similar. It was further set out that hereafter women police shall be given equal status to that of men, they shall be assigned equal work and duties as well as equal responsibilities and also be given posting equal to that of men. An Original Application thereafter came to be filed by one Vanmala Dongar Salunkhe being Original Application No.607 of 1997 before M.A.T. as the notification was not implemented, which came to be disposed of by an order dated 21st September, 1998, based on an affidavit filed by the State Government that it will take decision in the matter of creating common cadre of Police Officers for men and women.

. By Government Resolution of 18th July, 1998 the Government issued an order for formation of common cadre for men and women by giving priority to women in the State Police Force on the basis of seniority-cum-merit comparable to men personnel/officers. In other words as on 18th July, 1998 two separate cadres in the police force for women and men ceased to exist and were substituted by one cadre. Then comes the impugned direction of 16th June, 2005 whereby the respondent Nos. 3 to 9 were given fresh date in the cadre in the post of Police Inspector.

12. The question that we have been called upon to consider is whether the decision of the State Government as evidenced by the Notification of 1994 with further reference to G.R. of 18th July, 1998 is arbitrary. We may note from the translation of the G.R. placed before us dated 17th July, 1998 and 16th June, 2005, that the only basis for fixing inter se seniority in the common cadre is seniority-cum-merit. What that means cannot be understood, as the seniority is based on the date of regular entry into service. In our opinion, if that be the criteria then the same would be arbitrary in as much as, that would never be a test for fixing inter se seniority when two cadres are merged. When two cadres are being merged principles now recognised judicially had to be first applied and after such application the principles of inter se seniority had to be fixed.

13. The issue of fixation of merger of cadres and inter

se seniority in a merged care is no longer res integra as the principles fixed while fixing seniority in merged cadre consequent on the State Re-organisation Act have now been adopted as principles for fixation of inter se seniority and have received judicial recognition. We may first refer to the judgment of the Supreme Court in **State of Maharashtra & Anr. Vs. Chandrakant Anant Kulkarni, (1981) 4 SCC 130**. The principles as laid down may be reproduced herein below:-

> "10. The following principles had been formulated for being observed as far as may be, in the integration of government servants adopted to the services of the new States:
>
> In the matter of equation of posts:
>
> (i) Where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis; but
>
> Where, however, there were no such similar cadres the following factors will be taken into consideration in determining the equation of posts---
>
> (a) nature and duties of a post;
>
> (b) powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;

(c) the minimum qualifications, if any, prescribed for recruitment to the post, and

(d) the salary of the post.

It is well-settled that these principles have a statutory force."

. In S.P. Shivprasad Pipal, (1998) 4 SCC 598 the issue was of merging of three different cadres. In the challenge to the merger the Supreme Court held that the Government had rightly followed the principles enunciated in the case of State of Maharashtra vs. Chandrakant Anant Kulkarni (supra). One of the factors considered were pay scales drawn by the persons in their old cadre.

. The State, therefore, had to consider the tests whilst directing the merger of the two cadres.

14. From the impugned notification we find that the State Government appears not to have applied the principles and proceeded on the basis that the two cadres were similar. The very fact that the cadres were merged to give women the same responsibilities and duties was not taken into consideration as also the contention as urged by the respondent No.1 was that whereas the training period for male Police Inspector was 18 months that for women police inspector was six months. Further the course of training of

male Police Inspectors was different from the course of training for female Sub Inspectors. The third contention was that the nature of the work and duties were different. These would be relevant aspects to be considered whilst arriving at a conclusion. In our opinion the State Government ought to have considered these aspects and laid down criteria for merger of the two cadres and then fixing the inter se seniority in the merged cadres. Unless the State on examining the matter, had arrived at a conclusion that all things were equal. There has been no material placed before us to indicate that before deciding on the merger the State Government applied its mind to the criteria and material.

. From the impugned order also we do not find that any criteria was considered whilst merging the two cadres and fixing the inter se seniority of the male and female Sub Inspectors as also Inspectors in the merged cadre.

15. We are, therefore, of the opinion that the impugned order of 4th July, 2005 which has been set aside need not be interfered with. The State Government, however, is directed within six months from today to fix the principles firstly for the merger of the two cadres and then the inter se seniority for fixing the inter se seniority in the new merged cadre, from the batch of 1977-79 onwards. We make it clear that the appointment/promotion of officers who were recruited prior to 1977 is not to be interfered with.

. Rule to that extent partly made absolute. No order as to costs.

(F.I. REBELLO, J.)

(R.M.SAVANT, J.)